IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.3991 OF 2004

Yunus Adam Patel ..Petitioner

Vs.

Union of India & Ors. ..Respondents

Mr.K.S.Bapat with Mr. T.R.Yadav for Petitioner

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 22ND FEBRUARY, 2005.

P.C.

. The Petitioner is aggrieved by the order passed by Central Administrative Tribunal dated 29th August, 2003 in O.A. No.804 of 2002. Against that order Petitioner preferred a review application, being review application being No.71 of 2003 which was dismissed by order dated 19th November, 2003. Hence, the present Petition.

2. It is the case of the Petitioner that the impugned order is liable to be set aside basically on the following two grounds:-

(i). It is firstly contended that when the DPC was conveyed in September, 2000 the procedure for considering C.Rs was in terms of OM dated 13th October, 1998. It was therefore, not open to the Tribunal to have considered the OM dated 6th

October, 2000.

(ii). It is secondly contended that the petitioner's C.Rs. with mark as average was adverse but were not communicated and hence ought to have been ignored. It was also pointed out that one entry for the year 1997-98 was considered as good had been modified by the Review D.P.C. as average. If that had been considered the Petitioner would have got three 'goods' and being the senior most would have been selected.

. On facts, there is no denial about the C.R.'s of Respondent no.5. He has C.Rs as good for five years for the period the D.P.C. considered the records. So far as the Petitioner is concerned for the years 95-96, 97-98, and 99-2000 it was average and for the two other years it was good. Para 8 of the judgment of the Central Administrative Tribunal further shows that on the date of D.P.C. met on 5th December, 2000 penalty was imposed on petitioner of with-holding one increment of one year by order dated 23rd October, 2000. Record also shows that earlier the punishment of censure was imposed by order dated 9th November, 1984.

. We may now first deal with the petitioner's contention that the DPC wrongly applied the OM dated

6th October, 2000. The grievance of the petitioner is that the first DPC was conveyed in September, 2000. As no business was transacted the D.P.C. did not make selection. Reliance is placed on the judgment of the Apex Court in the case of **B.L. Gupta Vs. M.C.D. (1998)9 Supreme Court Cases 223**. On considering the ratio of the judgment in B.L. Gupta (Supra) it would be clear that it pertain to change of recruitment rules. In the instant case there is no change in recruitment rules. All that is changed is the procedure by which the DPC would consider the candidate. Eligibility and qualifications remained the same. In other words the petitioner was not denied consideration on the ground of eligibility. OM as prescribed would apply as the D.P.C. was convened after 1st December, 2000. Even assuming that the D.P.C. was first convened in September, 2000 the OM of 1998 would be in-applicable as on that day no business was transacted by the D.P.C. The D.P.C. would be governed by the O.M. which was applicable on the date when it was convened on 5th December, 2000. We therefore, do not find that the order of the Tribunal suffers from any error apparent on the face of record.

. We may now deal with the C.Rs. Admittedly respondent who was selected had good for 5 years

whereas petitioner had good for two years and average for three years. Even if the petitioner's contention is accepted that for 1997-98 he should be considered as good the petitioner's record could never had been better than that of the Respondent. Average would not be adverse entry. Hence non-communication of the entry is fnot illegal and consequently it could not have been ignored. Apart from that at the time that the D.P.C. met for selection there was punishment imposed on the Petitioner by way of disciplinary punishment. In other words the record of the Respondent was better than that of the petitioner on merits. The second contention therefore has to be rejected.

. For the above said reasons we find no merits in the petition . We dispose of the petition accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)